In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-568

WESLEY KRAUDE, M.D., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Central District of California, petitioner was convicted on eleven counts of having violated 18 U.S.C. 1001 by submitting knowingly false requests for medicare payments to an insurance company which was acting as the paying agent for the Social Security Administration. He was sentenced to concurrent three-year prison terms, which were suspended. He was placed on five years' probation on condition that he serve six months in jail; he was also fined $15,000. The court of appeals affirmed (Pet. App. A).

Petitioner contends that the false statements were

not within the "jurisdiction" of a government agency within the meaning of Section 1001 since they were made to the Occidental Life Insurance Company with whom the Department of Health, Education and Welfare had entered into a contract to handle medical claims. He also contends that he was denied a fair trial because one of the jurors allegedly concealed the fact on *voir dire* that she had been previously employed by the Los Angeles Office of the United States Department of Justice. These contentions are answered in the opinion below on which we rely (Pet. App. A, 2-3, 6-8). With respect to the first issue, we point out that neither *United States* v. *Adler,* 380 F.2d 917 (C.A. 2), nor *Friedman* v. *United States,* 374 F.2d 363 (C.A. 8), cited by petitioner (Pet. 10), is in conflict with the decision below, since neither case contains any discussion of whether statements made to an entity under contract with a federal agency are within the "jurisdiction" of the agency within the meaning of 18 U.S.C. 1001.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1972.

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